

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Patent Application of:)	Mail Stop Appeal Brief - Patents
)	
Isaac K. ELLIOTT et al.)	Group Art Unit: 2419
)	
Application No.: 09/879,983)	Examiner: M. Phan
)	
Filed: June 14, 2001)	
)	
For: SYSTEM AND METHOD FOR)	
PROVIDING REQUESTED)	
QUALITY OF SERVICE IN A)	
HYBRID NETWORK)	

APPEAL BRIEF

U.S. Patent and Trademark Office
Customer Window, Mail Stop Appeal Brief – Patents
Randolph Building
401 Dulany Street
Alexandria, Virginia 22314

Sir:

This Appeal Brief is submitted in response to the final Office Action, dated January 6, 2009, and in support of the Notice of Appeal, filed May 5, 2009.

TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
I. REAL PARTY IN INTEREST	3
II. RELATED APPEALS AND INTERFERENCES	4
III. STATUS OF CLAIMS	5
IV. STATUS OF AMENDMENTS	6
V. SUMMARY OF CLAIMED SUBJECT MATTER	7
VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL	9
VII. ARGUMENT	10
VIII. CONCLUSION	35
IX. CLAIM APPENDIX	36
X. EVIDENCE APPENDIX	39
XI. RELATED PROCEEDINGS APPENDIX	40

I. REAL PARTY IN INTEREST

The real party in interest of the present application, solely for purposes of identifying and avoiding potential conflicts of interest by board members due to working in matters in which the member has a financial interest, is Verizon Communications Inc. and its subsidiary companies, which currently include Verizon Business Global, LLC (formerly MCI, LLC) and Celco Partnership (doing business as Verizon Wireless, and which includes as a minority partner affiliates of Vodafone Group Plc). Verizon Communications Inc. or one of its subsidiary companies is an assignee of record of the present application.

II. RELATED APPEALS AND INTERFERENCES

Appellants are unaware of any related appeals, interferences or judicial proceedings.

III. STATUS OF CLAIMS

Claims 1-11 stand rejected. Claims 1-11 are the subject of the present appeal and are reproduced in the Claim Appendix attached hereto.

IV. STATUS OF AMENDMENTS

No amendment was filed subsequent to the final Office Action, dated January 6, 2009. Appellants filed a Request for Reconsideration on March 6, 2009. A subsequent Advisory Action, dated April 13, 2009, indicated that the Request for Reconsideration has been considered, but did not place the application in condition for allowance.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

The following summary of the presently claimed subject matter indicates certain portions of the specification (including the drawings) that provide examples of embodiments of elements of the claimed subject matter. It is to be understood that other portions of the specification not cited herein may also provide examples of embodiments of elements of the claimed subject matter. It is also to be understood that the indicated examples are merely examples, and the scope of the claimed subject matter includes alternative embodiments and equivalents thereof. References herein to the specification are thus intended to be exemplary and not limiting.

Claim 1 is directed to a method for media communication over a hybrid network which includes a circuit switched network and a packet switched network (e.g., Figs. 1F and 1G), comprising receiving a request for a media communication by a resource management processor connected to the hybrid network (e.g., Fig. 32; p. 113, lines 1-8, p. 652, lines 5-6); determining an amount of resources in the hybrid network necessary to obtain a requested quality of service (e.g., Fig. 32; p. 113, lines 1-8, p. 652, lines 7-8); allocating necessary resources to provide the requested quality of service on the hybrid network (e.g., Fig. 32; p. 113, lines 9-11, p. 652, lines 9-10); and releasing the necessary resources upon termination of the media communication (e.g., Fig. 32; p. 113, lines 13-16, p. 652, lines 11-12).

Claim 2 recites creating a bill detail record including an entry indicative of the requested quality of service on the hybrid network (e.g., Fig. 19B; p. 52, line 22 to p. 53, line 9, p. 652, lines 13-15); and transmitting the bill detail record to a call server connection to the hybrid network (e.g., Fig. 19B; p. 52, line 22 to p. 53, line 9, col. 652, lines 16-17).

Claim 5 recites determining the requested quality of service by parsing a field from the request for a media communication (e.g., p. 653, lines 1-3).

Claim 6 recites determining the requested quality of service from profile information associated with a caller of the media communication (e.g., p. 653, lines 4-6).

Claim 7 is directed to a method for media communication over a hybrid network which includes a circuit switched network and a packet switched network (e.g., Figs. 1F and 1G), comprising receiving a request for a media communication (e.g., Fig. 32; p. 113, lines 1-8, p. 652, lines 5-6); determining an amount of resources in the hybrid network necessary to obtain a requested quality of service (e.g., Fig. 32; p. 113, lines 1-8, p. 652, lines 7-8); and allocating necessary resources to provide the requested quality of service on the hybrid network (e.g., Fig. 32; p. 113, lines 13-16, p. 652, lines 11-12).

Claim 9 recites creating a bill detail record including an entry indicative of the requested quality of service on the hybrid network (e.g., Fig. 19B; p. 52, line 22 to p. 53, line 9, p. 652, lines 13-15), and transmitting the bill detail record to a call server associated with the hybrid network (e.g., Fig. 19B; p. 52, line 22 to p. 53, line 9, col. 652, lines 16-17).

Claim 10 is directed to a system for media communication over a hybrid network which includes a circuit switched network and a packet switched network (e.g., Figs. 1F and 1G), comprising a network device (e.g., Fig. 1 F and 1G) configured to receive a request for a media communication (e.g., p. 113, lines 1-8, p. 652, lines 5-6), determine an amount of resources in the hybrid network necessary to obtain a requested quality of service (e.g., p. 113, lines 1-8, p. 652, lines 7-8), and allocate the amount of resources to provide the requested quality of service on the hybrid network (e.g., p. 113, lines 9-11, p. 652, lines 9-10).

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

A. Claims 1, 5-8, 10, and 11 under 35 U.S.C. § 103(a) as unpatentable over
ALDRED et al. (U.S. Patent No. 5,719,942) in view of TUROCK (U.S. Patent No. 6,243,373).

B. Claims 2-5 and 9 stand rejected under 35 U.S.C. § 103(a) as unpatentable over
ALDRED et al. in view of TUROCK, and further in view of RONEN et al. (U.S. Patent No.
5,905,736).

VII. ARGUMENT**A. The rejection of claims 1, 5-8, 10, and 11 under 35 U.S.C. § 103(a) based on ALDRED ET AL. and TUROCK should be reversed.**

The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention always rests upon the Examiner. In re Oetiker, 977 F.2d 1443, 24 U.S.P.Q.2d 1443 (Fed. Cir. 1992). In rejecting a claim under 35 U.S.C. § 103, the Examiner must provide a factual basis to support the conclusion of obviousness. In re Warner, 379 F.2d 1011, 154 U.S.P.Q. 173 (CCPA 1967). Based upon the objective evidence of record, the Examiner is required to make the factual inquiries mandated by Graham v. John Deere Co., 86 S.Ct. 684, 383 U.S. 1, 148 U.S.P.Q. 459 (1966). KSR International Co. v. Teleflex Inc., 550 U.S. 398 (April 30, 2007). The Examiner is also required to explain how and why one having ordinary skill in the art would have been realistically motivated to modify an applied reference and/or combine applied references to arrive at the claimed invention. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 5 U.S.P.Q.2d 1434 (Fed. Cir. 1988).

1. Claim 1.

Independent claim 1 is directed to a method for media communication over a hybrid network that includes a circuit switched network and a packet switched network. The method includes receiving a request for a media communication by a resource management processor connected to the hybrid network; determining an amount of resources in the hybrid network necessary to obtain a requested quality of service; allocating necessary resources to provide the requested quality of service on the hybrid network; and releasing the necessary resources upon termination of the media communication. ALDRED et al. and TUROCK, whether taken alone or in any reasonable combination, do not disclose or suggest this combination of features.

For example, ALDRED et al. and TUROCK do not disclose or suggest determining an amount of resources in the hybrid network necessary to obtain a requested quality of service. The Examiner appears to rely on Fig. 9h and col. 1, line 52, to col. 46, line 48, of ALDRED et al. for disclosing determining an amount of resources in a network necessary to obtain a requested quality of service (final Office Action, pp. 5-6). The Examiner also admits that ALDRED et al. does not disclose a hybrid network that includes a circuit switched network and a packet switched network (final Office Action, p. 6). The Examiner relies on TUROCK for allegedly disclosing the hybrid network (final Office Action, pp. 6-7). Appellants submit that the Examiner's piecemeal analysis of the above feature of claim 1 is impermissible.

Claim 1 does not recite "determining an amount of resources in the network necessary to obtain a requested quality of service" and "hybrid network." Rather, claim 1 specifically recites "determining an amount of resources in the hybrid network necessary to obtain a requested quality of service." In other words, the feature of claim 1 that includes "determining an amount of resources in the hybrid network necessary to obtain a requested quality of service" cannot be separated from "hybrid network," as the Examiner has done in his piecemeal analysis of claim 1. Instead of addressing this specifically-recited feature of claim 1, the Examiner breaks the feature down into illogical parts by pointing to portions of one reference for allegedly disclosing "determining an amount of resources in the network necessary to obtain a requested quality of service" and to unrelated portions of a second reference for allegedly disclosing a "hybrid network." Such attempts at reconstructing Appellants' claims are clearly impermissible.

Nevertheless, Fig. 9h of ALDRED et al. depicts a flow chart for processing a request for support (col. 3, lines 33-34). ALDRED et al. discloses that an intermediate node receives a request that includes quality of service parameters required for a communication to the

destination node and determines whether the request can be supported (col. 20, lines 25-34). To make the determination, the intermediate node determines which adjacent node needs to be contacted to reach the destination node and determines whether the available communication resources to the adjacent node are sufficient to support the request (col. 20, lines 34-39). Thus, ALDRED et al. merely discloses the determination of whether adequate resources exist between one intermediate node and an adjacent node. This section of ALDRED et al. does not disclose or suggest determining an amount of resources in a hybrid network (that includes a circuit switched network and a packet switched network) necessary to obtain a requested quality of service, as recited in claim 1.

ALDRED et al. is directed to establishing a communication channel between a source node and a destination node (Abstract). As indicated above, ALDRED et al. discloses determining whether adequate resources exist between one intermediate node and an adjacent node (see, for example, col. 20, lines 34-39). ALDRED et al. does not disclose or suggest determining an amount of resources in a hybrid network (that includes a circuit switched network and a packet switched network) necessary to obtain a requested quality of service, as recited in claim 1.

The disclosure of TUROCK does not remedy the above deficiency in the disclosure of ALDRED et al. That is, TUROCK does not disclose or suggest determining an amount of resources in a hybrid network (that includes a circuit switched network and a packet switched network) necessary to obtain a requested quality of service, as recited in claim 1. TUROCK is directed to a system that provides audio information over a computer network (Abstract). While TUROCK discloses a hybrid network (see, for example, Fig. 2), TUROCK does not disclose or suggest determining an amount of resources in a hybrid network necessary to obtain a requested

quality of service, as recited in claim 1.

TUROCK discloses the establishment of a call from a source to a destination over a network that includes a PSTN and the Internet (Fig. 2). TUROCK discloses the steps involved in establishing the call at col. 6, line 29 to col. 7, line 17. TUROCK does not disclose or suggest that the process for establishing a call over a network, which includes a PSTN and the Internet, includes determining an amount of resources in the hybrid network necessary to obtain a requested quality of service, as recited in claim 1.

Therefore, even if TUROCK were combined with ALDRED et al., such a combination could not fairly be construed to disclose determining an amount of resources in the hybrid network necessary to obtain a requested quality of service, as recited in claim 1. Further, even if for the sake of argument, the combination of TUROCK with ALDRED et al. could fairly be construed to disclose each of the above feature of claim 1, Appellants assert that the reasons for combining TUROCK with ALDRED et al. do not satisfy the requirements of 35 U.S.C. § 103.

For example, with respect to the reasons for combining TUROCK with ALDRED et al., the Examiner alleges (final Office Action, pp. 7-8):

One skilled in the art would have recognized the need for effectively and efficiently providing requested quality of service routing in networks, and would have applied Turock's novel use of internet telephone system utilizing the quality of the voice into Aldred' logic for responding to request for quality of service parameters in network communications. Therefore, It would have been obvious to a person of ordinary skill in the art at the time of the invention was made to apply Turock's method and apparatus for implementing a computer network/internet telephone system into Aldred et al.'s system and method for establishing a communication channel over a heterogeneous network a source node and s destination node with the motivation being to provide a system and method for providing requested quality of service in a hybrid network.

Appellants submit that the Examiner's allegation is merely a conclusory statement of an alleged benefit of the combination. Such conclusory statements have been repeatedly held to be

insufficient for establishing a *prima facie* case of obviousness. In this respect, Appellants rely upon KSR International Co. v. Teleflex Inc., 550 U.S. 398 (April 30, 2007) (citing In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006)), where it was held that rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.

Furthermore, the Examiner does not explain how incorporating TUROCK's hybrid network into ALDRED et al.'s system, which determines whether available resources from an intermediate node to an adjacent node are sufficient to support a request, would cause ALDRED et al.'s system to provide a requested quality of service in a hybrid network. Moreover, the Examiner does not explain why one skilled in the art at the time of Appellants' invention would reasonably look to incorporate a hybrid network between ALDRED et al.'s intermediate and adjacent nodes. The Examiner's allegations clearly fall short of providing the articulated reasoning required by KSR.

Since ALDRED et al. and TUROCK do not disclose or suggest determining an amount of resources in a hybrid network necessary to obtain a requested quality of service, ALDRED et al. and TUROCK cannot disclose or suggest allocating necessary resources to provide the requested quality of service on the hybrid network, as also recited in claim 1.

For at least the foregoing reasons, Appellants submit that claim 1 is patentable over ALDRED et al. and TUROCK, whether taken alone or in any reasonable combination. Accordingly, Appellants respectfully request that the rejection of claim 1 under 35 U.S.C. § 103(a) based on ALDRED et al. and TUROCK be reversed.

2. Claim 5.

Claim 5 depends from claim 1. Therefore, this claim is patentable over ALDRED et al.

and TUROCK, whether taken alone or in any reasonable combination, for at least the reasons given above with respect to claim 1. Accordingly, Appellants respectfully request that the rejection of claim 5 under 35 U.S.C. § 103(a) based on ALDRED et al. and TUROCK be reversed. Moreover, this claim is patentable over ALDRED et al. and TUROCK for reasons of its own.

For example, claim 5 recites determining the requested quality of service by parsing a field from the request for a media communication. ALDRED et al. and TUROCK, whether taken alone or in any reasonable combination, do not disclose or suggest the above feature of claim 5. The Examiner does not address this feature in the rejection of claim 5 under 35 U.S.C. § 103(a) based on ALDRED et al. and TUROCK. Thus, the Examiner has not met the initial burden of establishing a *prima facie* case of obviousness with respect to claim 5.

For at least the foregoing reasons, Appellants submit that claim 5 is patentable over ALDRED et al. and TUROCK, whether taken alone or in any reasonable combination. Accordingly, Appellants respectfully request that the rejection of claim 5 under 35 U.S.C. § 103(a) based on ALDRED et al. and TUROCK be reversed.

3. Claim 6.

Claim 6 depends from claim 1. Therefore, this claim is patentable over ALDRED et al. and TUROCK, whether taken alone or in any reasonable combination, for at least the reasons given above with respect to claim 1. Accordingly, Appellants respectfully request that the rejection of claim 6 under 35 U.S.C. § 103(a) based on ALDRED et al. and TUROCK be reversed. Moreover, this claim is patentable over ALDRED et al. and TUROCK for reasons of its own.

Claim 6 recites determining the requested quality of service from profile information

associated with a caller of the media communication. With respect to this feature, the Examiner alleges:

Aldred teaches the Quality of service information characterizes the communication capabilities of the link. For each link type the link selection order, and defaults for the quality of service characteristics, are stored in the configuration profile (*profile information associated with a caller for communications*). The quality of service profile contains the necessary information for the support system to decide whether and how compression and encryption should be used. The value in the profile entry is used to fill in the fields of a launch call, which is then executed (*profile information of the caller is used in establishing media communications*)

(final Office Action, p. 7) (emphasis in original). Appellants respectfully disagree.

ALDRED et al. does not disclose or suggest that the configuration profile is or includes profile information associated with a caller of a media communication, as the Examiner alleges. Moreover, ALDRED et al. does not disclose or suggest that the quality of service profile is or includes profile information associated with a caller of a media communication, as the Examiner also appears to allege. The Examiner has not pointed to any section of ALDRED et al. that discloses that the configuration profile or the quality of service profile includes profile information associated with a caller of a media communication and determining a requested quality of service based on the profile information associated with the caller, as would be required of ALDRED et al. based on the Examiner's interpretation of claim 6. Accordingly, the Examiner has not met the initial burden of establishing a *prima facie* case of obviousness with respect to claim 6.

The disclosure of TUROCK does not remedy the above deficiency in the disclosure of ALDRED et al.

For at least the foregoing reasons, Appellants submit that claim 6 is patentable over ALDRED et al. and TUROCK, whether taken alone or in any reasonable combination.

Accordingly, Appellants respectfully request that the rejection of claim 6 under 35 U.S.C. § 103(a) based on ALDRED et al. and TUROCK be reversed.

4. Claims 7 and 8.

Independent claim 7 is directed to a method for media communication over a hybrid network that includes a circuit switched network and a packet switched network. The method includes receiving a request for a media communication; determining an amount of resources in the hybrid network necessary to obtain a requested quality of service; and allocating necessary resources to provide the requested quality of service on the hybrid network. ALDRED et al. and TUROCK, whether taken alone or in any reasonable combination, do not disclose or suggest this combination of features.

For example, ALDRED et al. and TUROCK do not disclose or suggest determining an amount of resources in the hybrid network necessary to obtain a requested quality of service. The Examiner appears to rely on Fig. 9h and col. 1, line 52, to col. 46, line 48, of ALDRED et al. for disclosing determining an amount of resources in a network necessary to obtain a requested quality of service (final Office Action, pp. 5-7). The Examiner also admits that ALDRED et al. does not disclose a hybrid network that includes a circuit switched network and a packet switched network (final Office Action, p. 6). The Examiner relies on TUROCK for allegedly disclosing the hybrid network (final Office Action, pp. 6-7). Appellants submit that the Examiner's piecemeal analysis of the above feature of claim 7 is impermissible.

Claim 7 does not recite "determining an amount of resources in the network necessary to obtain a requested quality of service" and "hybrid network." Rather, claim 7 specifically recites "determining an amount of resources in the hybrid network necessary to obtain a requested quality of service." In other words, the feature of claim 7 that includes "determining an amount

of resources in the hybrid network necessary to obtain a requested quality of service" cannot be separated from "hybrid network," as the Examiner has done in his piecemeal analysis of claim 7. Instead of addressing this specifically-recited feature of claim 7, the Examiner breaks the feature down into illogical parts by pointing to portions of one reference for allegedly disclosing "determining an amount of resources in the network necessary to obtain a requested quality of service" and to unrelated portions of a second reference for allegedly disclosing a "hybrid network." Such attempts at reconstructing Appellants' claims are clearly impermissible.

Nevertheless, Fig. 9h of ALDRED et al. depicts a flow chart for processing a request for support (col. 3, lines 33-34). ALDRED et al. discloses that an intermediate node receives a request that includes quality of service parameters required for a communication to the destination node and determines whether the request can be supported (col. 20, lines 25-34). To make the determination, the intermediate node determines which adjacent node needs to be contacted to reach the destination node and determines whether the available communication resources to the adjacent node are sufficient to support the request (col. 20, lines 34-39). Thus, ALDRED et al. merely discloses the determination of whether adequate resources exist between one intermediate node and an adjacent node. This section of ALDRED et al. does not disclose or suggest determining an amount of resources in a hybrid network (that includes a circuit switched network and a packet switched network) necessary to obtain a requested quality of service, as recited in claim 7.

ALDRED et al. is directed to establishing a communication channel between a source node and a destination node (Abstract). As indicated above, ALDRED et al. discloses determining whether adequate resources exist between one intermediate node and an adjacent node (see, for example, col. 20, lines 34-39). ALDRED et al. does not disclose or suggest

determining an amount of resources in a hybrid network (that includes a circuit switched network and a packet switched network) necessary to obtain a requested quality of service, as recited in claim 7.

The disclosure of TUROCK does not remedy the above deficiency in the disclosure of ALDRED et al. That is, TUROCK does not disclose or suggest determining an amount of resources in a hybrid network (that includes a circuit switched network and a packet switched network) necessary to obtain a requested quality of service, as recited in claim 7. TUROCK is directed to a system that provides audio information over a computer network (Abstract). While TUROCK discloses a hybrid network (see, for example, Fig. 2), TUROCK does not disclose or suggest determining an amount of resources in a hybrid network necessary to obtain a requested quality of service, as recited in claim 7.

TUROCK discloses the establishment of a call from a source to a destination over a network that includes a PSTN and the Internet (Fig. 2). TUROCK discloses the steps involved in establishing the call at col. 6, line 29 to col. 7, line 17. TUROCK does not disclose or suggest that the process for establishing a call over a network, which includes a PSTN and the Internet, includes determining an amount of resources in the hybrid network necessary to obtain a requested quality of service, as recited in claim 7.

Therefore, even if TUROCK were combined with ALDRED et al., such a combination could not fairly be construed to disclose determining an amount of resources in the hybrid network necessary to obtain a requested quality of service, as recited in claim 7. Further, even if for the sake of argument, the combination of TUROCK with ALDRED et al. could fairly be construed to disclose each of the above feature of claim 7, Appellants assert that the reasons for combining TUROCK with ALDRED et al. do not satisfy the requirements of 35 U.S.C. § 103.

For example, with respect to the reasons for combining TUROCK with ALDRED et al., the Examiner alleges (final Office Action, pp. 7-8):

One skilled in the art would have recognized the need for effectively and efficiently providing requested quality of service routing in networks, and would have applied Turock's novel use of internet telephone system utilizing the quality of the voice into Aldred' logic for responding to request for quality of service parameters in network communications. Therefore, It would have been obvious to a person of ordinary skill in the art at the time of the invention was made to apply Turock's method and apparatus for implementing a computer network/internet telephone system into Aldred et al.'s system and method for establishing a communication channel over a heterogeneous network a source node and s destination node with the motivation being to provide a system and method for providing requested quality of service in a hybrid network.

Appellants submit that the Examiner's allegation is merely a conclusory statement of an alleged benefit of the combination. Such conclusory statements have been repeatedly held to be insufficient for establishing a *prima facie* case of obviousness. In this respect, Appellants rely upon KSR International Co. v. Teleflex Inc., 550 U.S. 398 (April 30, 2007) (citing In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006)), where it was held that rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.

Furthermore, the Examiner does not explain how incorporating TUROCK's hybrid network into ALDRED et al.'s system, which determines whether available resources from an intermediate node to an adjacent node are sufficient to support a request, would cause ALDRED et al.'s system to provide a requested quality of service in a hybrid network. Moreover, the Examiner does not explain why one skilled in the art at the time of Appellants' invention would reasonably look to incorporate a hybrid network between ALDRED et al.'s intermediate and adjacent nodes. The Examiner's allegations clearly fall short of providing the articulated reasoning required by KSR.

Since ALDRED et al. and TUROCK do not disclose or suggest determining an amount of resources in a hybrid network necessary to obtain a requested quality of service, ALDRED et al. and TUROCK cannot disclose or suggest allocating necessary resources to provide the requested quality of service on the hybrid network, as also recited in claim 7.

For at least the foregoing reasons, Appellants submit that claim 7 is patentable over ALDRED et al. and TUROCK, whether taken alone or in any reasonable combination. Accordingly, Appellants respectfully request that the rejection of claim 7 under 35 U.S.C. § 103(a) based on ALDRED et al. and TUROCK be reversed.

Claim 8 depends from claim 7. Therefore, this claim is patentable over ALDRED et al. and TUROCK, whether taken alone or in any reasonable combination, for at least the reasons set forth above with respect to claim 7. Accordingly, Appellant respectfully requests that the rejection of claim 8 under 35 U.S.C. § 103(a) based on ALDRED et al. and TUROCK be reversed.

5. Claim 10.

Independent claim 10 is directed to a system for media communication over a hybrid network which includes a circuit switched network and a packet switched network. The system includes a network device configured to receive a request for a media communication, determine an amount of resources in the hybrid network necessary to obtain a requested quality of service, and allocate the amount of resources to provide the requested quality of service on the hybrid network. ALDRED et al. and TUROCK, whether taken alone or in any reasonable combination, do not disclose or suggest this combination of features.

For example, ALDRED et al. and TUROCK do not disclose or suggest a network device configured to determine an amount of resources in the hybrid network necessary to obtain a

requested quality of service. The Examiner appears to rely on Fig. 9h and col. 1, line 52, to col. 46, line 48, of ALDRED et al. for disclosing a network device configured to determine an amount of resources in a network necessary to obtain a requested quality of service (final Office Action, pp. 5-7). The Examiner also admits that ALDRED et al. does not disclose a hybrid network that includes a circuit switched network and a packet switched network (final Office Action, p. 6). The Examiner relies on TUROCK for allegedly disclosing the hybrid network (final Office Action, pp. 6-7). Appellants submit that the Examiner's piecemeal analysis of the above feature of claim 10 is impermissible.

Claim 10 does not recite "determine an amount of resources in the network necessary to obtain a requested quality of service" and "hybrid network." Rather, claim 10 specifically recites "determine an amount of resources in the hybrid network necessary to obtain a requested quality of service." In other words, the feature of claim 10 that includes "determine an amount of resources in the hybrid network necessary to obtain a requested quality of service" cannot be separated from "hybrid network," as the Examiner has done in his piecemeal analysis of claim 10. Instead of addressing this specifically-recited feature of claim 10, the Examiner breaks the feature down into illogical parts by pointing to portions of one reference for allegedly disclosing "determine an amount of resources in the network necessary to obtain a requested quality of service" and to unrelated portions of a second reference for allegedly disclosing a "hybrid network." Such attempts at reconstructing Appellants' claims are clearly impermissible.

Nevertheless, Fig. 9h of ALDRED et al. depicts a flow chart for processing a request for support (col. 3, lines 33-34). ALDRED et al. discloses that an intermediate node receives a request that includes quality of service parameters required for a communication to the destination node and determines whether the request can be supported (col. 20, lines 25-34). To

make the determination, the intermediate node determines which adjacent node needs to be contacted to reach the destination node and determines whether the available communication resources to the adjacent node are sufficient to support the request (col. 20, lines 34-39). Thus, ALDRED et al. merely discloses the determination of whether adequate resources exist between one intermediate node and an adjacent node. This section of ALDRED et al. does not disclose or suggest a network device configured to determine an amount of resources in the hybrid network (that includes a circuit switched network and a packet switched network) necessary to obtain a requested quality of service, as recited in claim 10.

ALDRED et al. is directed to establishing a communication channel between a source node and a destination node (Abstract). As indicated above, ALDRED et al. discloses determining whether adequate resources exist between one intermediate node and an adjacent node (see, for example, col. 20, lines 34-39). ALDRED et al. does not disclose or suggest a network device configured to determine an amount of resources in the hybrid network (that includes a circuit switched network and a packet switched network) necessary to obtain a requested quality of service, as recited in claim 10.

The disclosure of TUROCK does not remedy the above deficiency in the disclosure of ALDRED et al. That is, TUROCK does not disclose or suggest a network device configured to determine an amount of resources in the hybrid network (that includes a circuit switched network and a packet switched network) necessary to obtain a requested quality of service, as recited in claim 10. TUROCK is directed to a system that provides audio information over a computer network (Abstract). While TUROCK discloses a hybrid network (see, for example, Fig. 2), TUROCK does not disclose or suggest a network device configured to determine an amount of resources in the hybrid network (that includes a circuit switched network and a packet switched

network) necessary to obtain a requested quality of service, as recited in claim 10.

TUROCK discloses the establishment of a call from a source to a destination over a network that includes a PSTN and the Internet (Fig. 2). TUROCK discloses the steps involved in establishing the call at col. 6, line 29 to col. 7, line 17. TUROCK does not disclose or suggest that the process for establishing a call over a network, which includes a PSTN and the Internet, includes a network device configured to determine an amount of resources in the hybrid network (that includes a circuit switched network and a packet switched network) necessary to obtain a requested quality of service, as recited in claim 10.

Therefore, even if TUROCK were combined with ALDRED et al., such a combination could not fairly be construed to disclose a network device configured to determine an amount of resources in the hybrid network (that includes a circuit switched network and a packet switched network) necessary to obtain a requested quality of service, as recited in claim 10. Further, even if for the sake of argument, the combination of TUROCK with ALDRED et al. could fairly be construed to disclose each of the above feature of claim 10, Appellants assert that the reasons for combining TUROCK with ALDRED et al. do not satisfy the requirements of 35 U.S.C. § 103.

For example, with respect to the reasons for combining TUROCK with ALDRED et al., the Examiner alleges (final Office Action, pp. 7-8):

One skilled in the art would have recognized the need for effectively and efficiently providing requested quality of service routing in networks, and would have applied Turock's novel use of internet telephone system utilizing the quality of the voice into Aldred' logic for responding to request for quality of service parameters in network communications. Therefore, It would have been obvious to a person of ordinary skill in the art at the time of the invention was made to apply Turock's method and apparatus for implementing a computer network/internet telephone system into Aldred et al.'s system and method for establishing a communication channel over a heterogeneous network a source node and s destination node with the motivation being to provide a system and method for providing requested quality of service in a hybrid network.

Appellants submit that the Examiner's allegation is merely a conclusory statement of an alleged benefit of the combination. Such conclusory statements have been repeatedly held to be insufficient for establishing a *prima facie* case of obviousness. In this respect, Appellants rely upon KSR International Co. v. Teleflex Inc., 550 U.S. 398 (April 30, 2007) (citing In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006)), where it was held that rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.

Furthermore, the Examiner does not explain how incorporating TUROCK's hybrid network into ALDRED et al.'s system, which determines whether available resources from an intermediate node to an adjacent node are sufficient to support a request, would cause ALDRED et al.'s system to provide a requested quality of service in a hybrid network. Moreover, the Examiner does not explain why one skilled in the art at the time of Appellants' invention would reasonably look to incorporate a hybrid network between ALDRED et al.'s intermediate and adjacent nodes. The Examiner's allegations clearly fall short of providing the articulated reasoning required by KSR.

Since ALDRED et al. and TUROCK do not disclose or suggest a network device configured to determine an amount of resources in the hybrid network (that includes a circuit switched network and a packet switched network) necessary to obtain a requested quality of service, ALDRED et al. and TUROCK cannot disclose or suggest that the network device is configured to allocate the amount of resources to provide the requested quality of service on the hybrid network, as also recited in claim 10.

For at least the foregoing reasons, Appellants submit that claim 10 is patentable over

ALDRED et al. and TUROCK, whether taken alone or in any reasonable combination.

Accordingly, Appellants respectfully request that the rejection of claim 10 under 35 U.S.C. § 103(a) based on ALDRED et al. and TUROCK be reversed.

Claim 11 depends from claim 10. Therefore, this claim is patentable over ALDRED et al. and TUROCK, whether taken alone or in any reasonable combination, for at least the reasons set forth above with respect to claim 10. Accordingly, Appellant respectfully requests that the rejection of claim 11 under 35 U.S.C. § 103(a) based on ALDRED et al. and TUROCK be reversed.

B. The rejection of claims 2-5 and 9 under 35 U.S.C. § 103(a) based on ALDRED et al., TUROCK, and RONEN et al. should be reversed.

1. Claims 2-4.

Claim 2 depends from claim 1. While not acquiescing in the Examiner's rejection of claim 2, Appellants submit that the disclosure of RONEN et al. does not remedy the deficiencies in the disclosures of ALDRED et al. and TUROCK set forth above with respect to claim 1. For example, RONEN et al. does not disclose or suggest determining an amount of resources in a hybrid network (which includes a circuit switched network and a packet switched network) necessary to obtain a requested quality of service and allocating necessary resources to provide the requested quality of service, as recited in claim 1. Therefore, Appellants submit that claim 2 is patentable over ALDRED et al., TUROCK, and RONEN et al., whether taken alone or in any reasonable combination, for at least the reasons given above with respect to claim 1. Accordingly, Appellants respectfully request that the rejection of claim 2 under 35 U.S.C. § 103(a) based on ALDRED et al., TUROCK, and RONEN et al. be reversed. Moreover, this

claim is patentable over ALDRED et al., TUROCK, and RONEN et al. for reasons of its own.

Claim 2 recites creating a bill detail record including an entry indicative of the requested quality of service on the hybrid network and transmitting the bill detail record to a call server connection to the hybrid network. ALDRED et al., TUROCK, and RONEN et al., whether taken alone or in any reasonable combination, do not disclose or suggest this combination of features.

For example, ALDRED et al., TUROCK, and RONEN et al. do not disclose or suggest creating a bill detail record including an entry indicative of the requested quality of service on the hybrid network. The Examiner admits that ALDRED et al. and TUROCK do not disclose this feature (final Office Action, p. 8). The Examiner appears to rely on Fig. 1 of RONEN et al. and RONEN et al.'s alleged disclosure that "charges for all such transactions are accumulated by a transaction server (109) and stored in an account on an associated database (110) identified with the IP address of the requesting terminal" for allegedly disclosing the above feature of claim 2 (final Office Action, pp. 8-9). Appellants disagree with the Examiner's interpretation of RONEN et al.

Fig. 1 of RONEN et al. depicts a network that includes centralized billing functionality for transactions conducted by a user through an Internet Access Provider to one of a plurality of different Internet Service Providers (col. 3, lines 7-12). Neither this figure of RONEN et al. nor the description thereof discloses or suggests creating a bill detail record including an entry indicative of the requested quality of service on the hybrid network, as recited in claim 2.

RONEN et al. discloses, as the Examiner alleges, that charges for transactions are accumulated by a transaction server 109 and stored in an account on an associated database 110 identified with the IP address of the requesting terminal (Abstract). RONEN et al. does not disclose or suggest that the IP address of the requesting terminal corresponds to or includes

information indicative of a requested quality of service on a hybrid network. Appellants submit that storing an IP address of a requesting terminal is not equivalent to creating a bill detail record including an entry indicative of the requested quality of service on the hybrid network, as recited in claim 2. Moreover, the Examiner does not explain how the above section of RONEN et al. can reasonably be construed as disclosing creating a bill detail record including an entry indicative of the requested quality of service on the hybrid network, as recited in claim 2. Thus, the Examiner has not met the initial burden of establishing a *prima facie* case of obviousness with respect to claim 2.

Therefore, even if RONEN et al. were combined with ALDRED et al. and TUROCK, such a combination could not fairly be construed to disclose creating a bill detail record including an entry indicative of the requested quality of service on the hybrid network, as recited in claim 2. Further, even if, for the sake of argument, the combination of RONEN et al. with ALDRED et al. and TUROCK could fairly be construed to disclose each of the above feature of claim 2, Appellants assert that the reasons for combining RONEN et al. with ALDRED et al. and TUROCK do not satisfy the requirements of 35 U.S.C. § 103.

For example, with respect to the reasons for combining RONEN et al. with ALDRED et al. and TUROCK, the Examiner alleges (final Office Action, pp. 9-10):

One skilled in the art would have recognized the need for effectively and efficiently providing requested quality of service routing in networks, and would have applied Ronen's teaching of the billing detail record and Turock's novel use of internet telephone system utilizing the quality of the voice into Aldred' logic for responding to request for quality of service parameters in network communications. Therefore, It would have been obvious to a person of ordinary skill in the art at the time of the invention was made to apply Ronen's method for the billing of transaction over the internet, and Turock's method and apparatus for implementing a computer network/ internet telephone system into Aldred et al.'s system and method for establishing a communication channel over a heterogeneous network a source node and a destination node with the motivation

being to provide a system and method for providing requested quality of service in a hybrid network.

Appellants submit that the Examiner's allegation is merely a conclusory statement of an alleged benefit of the combination. Such conclusory statements have been repeatedly held to be insufficient for establishing a *prima facie* case of obviousness. In this respect, Appellants rely upon KSR International Co. v. Teleflex Inc., 550 U.S. 398 (April 30, 2007) (citing In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006)), where it was held that rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.

Furthermore, the Examiner does not explain how incorporating RONEN's alleged disclosure of creating a bill detail record including an entry indicative of the requested quality of service on the hybrid network into ALDRED et al.'s system would cause ALDRED et al.'s system to provide a requested quality of service in a hybrid network. The Examiner's allegations clearly fall short of providing the articulated reasoning required by KSR and is clearly based on impermissible hindsight.

For at least the foregoing reasons, Appellants submit that claim 2 is patentable over ALDRED et al., TUROCK, and RONEN et al., whether taken alone or in any reasonable combination. Accordingly, Appellants respectfully request that the rejection of claim 2 under 35 U.S.C. § 103(a) based on ALDRED et al., TUROCK, and RONEN et al. be reversed.

Claims 3 and 4 depend from claim 2. Therefore, these claims are patentable over ALDRED et al., TUROCK, and RONEN et al., whether taken alone or in any reasonable combination, for at least the reasons set forth above with respect to claim 2. Accordingly, Appellants respectfully request that the rejection of claims 3 and 4 under 35 U.S.C. § 103(a)

based on ALDRED et al., TUROCK, and RONEN et al. be reversed.

2. Claim 5.

Claim 5 depends from claim 1. While not acquiescing in the Examiner's rejection of claim 5, Appellants submit that the disclosure of RONEN et al. does not remedy the deficiencies in the disclosures of ALDRED et al. and TUROCK set forth above with respect to claim 1. For example, RONEN et al. does not disclose or suggest determining an amount of resources in a hybrid network (which includes a circuit switched network and a packet switched network) necessary to obtain a requested quality of service and allocating necessary resources to provide the requested quality of service, as recited in claim 1. Therefore, Appellants submit that claim 5 is patentable over ALDRED et al., TUROCK, and RONEN et al., whether taken alone or in any reasonable combination, for at least the reasons given above with respect to claim 1. Accordingly, Appellants respectfully request that the rejection of claim 5 under 35 U.S.C. § 103(a) based on ALDRED et al., TUROCK, and RONEN et al. be reversed.

3. Claim 9.

Claim 9 depends from claim 7. While not acquiescing in the Examiner's rejection of claim 9, Appellants submit that the disclosure of RONEN et al. does not remedy the deficiencies in the disclosures of ALDRED et al. and TUROCK set forth above with respect to claim 7. For example, RONEN et al. does not disclose or suggest determining an amount of resources in a hybrid network (which includes a circuit switched network and a packet switched network) necessary to obtain a requested quality of service and allocating necessary resources to provide the requested quality of service, as recited in claim 7. Therefore, Appellants submit that claim 9 is patentable over ALDRED et al., TUROCK, and RONEN et al., whether taken alone or in any reasonable combination, for at least the reasons given above with respect to claim 7.

Accordingly, Appellants respectfully request that the rejection of claim 9 under 35 U.S.C. § 103(a) based on ALDRED et al., TUROCK, and RONEN et al. be reversed. Moreover, this claim is patentable over ALDRED et al., TUROCK, and RONEN et al. for reasons of its own.

Claim 9 recites creating a bill detail record including an entry indicative of the requested quality of service on the hybrid network and transmitting the bill detail record to a call server associated with the hybrid network. ALDRED et al., TUROCK, and RONEN et al., whether taken alone or in any reasonable combination, do not disclose or suggest this combination of features.

For example, ALDRED et al., TUROCK, and RONEN et al. do not disclose or suggest creating a bill detail record including an entry indicative of the requested quality of service on the hybrid network. The Examiner admits that ALDRED et al. and TUROCK do not disclose this feature (final Office Action, p. 8). The Examiner appears to rely on Fig. 1 of RONEN et al. and RONEN et al.'s alleged disclosure that "charges for all such transactions are accumulated by a transaction server (109) and stored in an account on an associated database (110) identified with the IP address of the requesting terminal" for allegedly disclosing the above feature of claim 9 (final Office Action, pp. 8-9). Appellants disagree with the Examiner's interpretation of RONEN et al.

Fig. 1 of RONEN et al. depicts a network that includes centralized billing functionality for transactions conducted by a user through an Internet Access Provider to one of a plurality of different Internet Service Providers (col. 3, lines 7-12). Neither this figure of RONEN et al. nor the description thereof discloses or suggests creating a bill detail record including an entry indicative of the requested quality of service on the hybrid network, as recited in claim 9.

RONEN et al. discloses, as the Examiner alleges, that charges for transactions are

accumulated by a transaction server 109 and stored in an account on an associated database 110 identified with the IP address of the requesting terminal (Abstract). RONEN et al. does not disclose or suggest that the IP address of the requesting terminal corresponds to or includes information indicative of a requested quality of service on a hybrid network. Appellants submit that storing an IP address of a requesting terminal is not equivalent to creating a bill detail record including an entry indicative of the requested quality of service on the hybrid network, as recited in claim 9. Moreover, the Examiner does not explain how the above section of RONEN et al. can reasonably be construed as disclosing creating a bill detail record including an entry indicative of the requested quality of service on the hybrid network, as recited in claim 9. Thus, the Examiner has not met the initial burden of establishing a *prima facie* case of obviousness with respect to claim 9.

Therefore, even if RONEN et al. were combined with ALDRED et al. and TUROCK, such a combination could not fairly be construed to disclose creating a bill detail record including an entry indicative of the requested quality of service on the hybrid network, as recited in claim 9. Further, even if, for the sake of argument, the combination of RONEN et al. with ALDRED et al. and TUROCK could fairly be construed to disclose each of the above feature of claim 9, Appellants assert that the reasons for combining RONEN et al. with ALDRED et al. and TUROCK do not satisfy the requirements of 35 U.S.C. § 103.

For example, with respect to the reasons for combining RONEN et al. with ALDRED et al. and TUROCK, the Examiner alleges (final Office Action, pp. 9-10):

One skilled in the art would have recognized the need for effectively and efficiently providing requested quality of service routing in networks, and would have applied Ronen's teaching of the billing detail record and Turock's novel use of internet telephone system utilizing the quality of the voice into Aldred' logic for responding to request for quality of service parameters in network

communications. Therefore, It would have been obvious to a person of ordinary skill in the art at the time of the invention was made to apply Ronen's method for the billing of transaction over the internet, and Turock's method and apparatus for implementing a computer network/ internet telephone system into Aldred et al.'s system and method for establishing a communication channel over a heterogeneous network a source node and a destination node with the motivation being to provide a system and method for providing requested quality of service in a hybrid network.

Appellants submit that the Examiner's allegation is merely a conclusory statement of an alleged benefit of the combination. Such conclusory statements have been repeatedly held to be insufficient for establishing a *prima facie* case of obviousness. In this respect, Appellants rely upon KSR International Co. v. Teleflex Inc., 550 U.S. 398 (April 30, 2007) (citing In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006)), where it was held that rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.

Furthermore, the Examiner does not explain how incorporating RONEN's alleged disclosure of creating a bill detail record including an entry indicative of the requested quality of service on the hybrid network into ALDRED et al.'s system would cause ALDRED et al.'s system to provide a requested quality of service in a hybrid network. The Examiner's allegations clearly fall short of providing the articulated reasoning required by KSR and is clearly based on impermissible hindsight.

For at least the foregoing reasons, Appellants submit that claim 9 is patentable over ALDRED et al., TUROCK, and RONEN et al., whether taken alone or in any reasonable combination. Accordingly, Appellants respectfully request that the rejection of claim 9 under 35 U.S.C. § 103(a) based on ALDRED et al., TUROCK, and RONEN et al. be reversed.

VIII. CONCLUSION

In view of the foregoing arguments, Appellants respectfully solicit the Honorable Board to reverse the Examiner's rejections of claims 1-11.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 50-1070 and please credit any excess fees to such deposit account.

Respectfully submitted,

HARRITY & HARRITY, LLP

By: /John E. Harrity, Reg. No. 43,367/
John E. Harrity
Reg. No. 43,367

Date: July 2, 2009

11350 Random Hills Road
Suite 600
Fairfax, VA 22030
Telephone: (571) 432-0800
Facsimile: (571) 432-0808

Customer Number: 25537

IX. CLAIM APPENDIX

1. A method for media communication over a hybrid network which includes a circuit switched network and a packet switched network, comprising:
 - receiving a request for a media communication by a resource management processor connected to the hybrid network;
 - determining an amount of resources in the hybrid network necessary to obtain a requested quality of service;
 - allocating necessary resources to provide the requested quality of service on the hybrid network; and
 - releasing the necessary resources upon termination of the media communication.
2. The method for media communication in claim 1, further comprising:
 - creating a bill detail record including an entry indicative of the requested quality of service on the hybrid network; and
 - transmitting the bill detail record to a call server connection to the hybrid network.
3. The method for media communication in claim 2, further comprising:
 - transmitting a message to the call server with an entry indicative of time of termination of the media communication.
4. The method for media communication in claim 3, further comprising:
 - creating an additional entry in the bill detail record indicative of a type of service

provided by the hybrid network.

5. The method for media communication in claim 1, further comprising:
determining the requested quality of service by parsing a field from the request
for a media communication.
6. The method for media communication in claim 1, further comprising:
determining the requested quality of service from profile information associated
with a caller of the media communication.
7. A method for media communication over a hybrid network which includes a
circuit switched network and a packet switched network, comprising:
receiving a request for a media communication;
determining an amount of resources in the hybrid network necessary to obtain a
requested quality of service; and
allocating necessary resources to provide the requested quality of service on the
hybrid network.
8. The method of claim 7 further comprising:
releasing the necessary resources upon termination of the media communication.
9. The method of claim 7 further comprising:
creating a bill detail record including an entry indicative of the requested quality

of service on the hybrid network, and

transmitting the bill detail record to a call server associated with the hybrid network.

10. A system for media communication over a hybrid network which includes a circuit switched network and a packet switched network, comprising:

a network device configured to:

receive a request for a media communication,

determine an amount of resources in the hybrid network necessary to obtain a requested quality of service, and

allocate the amount of resources to provide the requested quality of service on the hybrid network.

11. The system of claim 10, wherein the network device is further configured to:

release the amount of resources upon termination of the media communication.

APPEAL BRIEF

Application No. 09/879,983
Attorney's Docket No. **VON96046C1**

X. EVIDENCE APPENDIX

None

APPEAL BRIEF

Application No. 09/879,983
Attorney's Docket No. **VON96046C1**

XI. RELATED PROCEEDINGS APPENDIX

None